



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 28 2009

Mark Nguyen
11308 Rasmussen Court
Riverside, California 92505

RE: MUR 5924
Mark Nguyen

Dear Mr. Nguyen:

On May 15, 2009, the Federal Election Commission accepted the signed conciliation agreement submitted on your behalf in settlement of a violation of 2 U.S.C. § 441a(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter as it pertains to you.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the effective date of the conciliation agreement. If you have any questions, please contact me at (202) 694-1548.

Sincerely,

A handwritten signature in black ink that reads "Elena Paoli". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Elena Paoli
Attorney

Enclosure
Conciliation Agreement

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In the Matter of)
) **MUR 5924**
Mark Nguyen)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Gary Schons, State of California, Department of Justice. The Federal Election Commission ("Commission") found reason to believe that Mark Nguyen violated 2 U.S.C. §§ 441a(a)(1).

NOW, THEREFORE, the Commission and Mark Nguyen, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Tan Nguyen for Congress ("the Committee") is an authorized committee for candidate Tan Nguyen, and is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Respondent Mark Nguyen was a friend of Tan Nguyen and a volunteer campaign worker for the Committee during the times relevant to the matters herein.

Applicable Law

3. No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1). Contributions include the financing by any person of the dissemination of any written form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents. 2 U.S.C. § 441a(a)(7)(B).

4. A payment for a coordinated communication is an in-kind contribution to the candidate's authorized committee with which it is coordinated and must be reported as an expenditure made by that candidate's authorized committee. 11 C.F.R. § 109.21(b)(1). To determine whether a communication is coordinated, 11 C.F.R. § 109.21 sets forth a three-pronged test: (1) the communication must be paid for by a person other than a Federal candidate, a candidate's authorized committee, or political party committee, or any agent of any of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. 11 C.F.R. § 109.21(a).

5. The knowing and willful standard requires knowledge that one is violating the law. The phrase "knowing and willful" indicates that "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law...." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); see also *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02 (D.C. Cir.), cert. denied, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts before it that this standard was not met) (cited in *National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)).

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6. An inference of knowing and willful conduct may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990).

7. The evidence need not show that the defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there are "facts and circumstances from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)).

Factual Background

8. In late September 2006, Respondent began to assist the Committee with a mass mailing of a letter written in Spanish. In early October 2006, Mark Nguyen and another campaign volunteer, took charge of the mailing, with the assistance of Chi Dinh, the Committee's secretary and Mark Nguyen's fiancé. Tan Nguyen emailed Dinh the list of voters he had purchased from Political Data, and Dinh, using one of Mark Nguyen's email accounts, emailed the list to Mailing Pros, the mailing house used by the Committee. Mark Nguyen asked his Los Angeles Police Department colleague Sergio Ramirez to "proof" the letter, which Ramirez did. Mark Nguyen asked Ramirez to sign the letter to show that he proofed it. Without asking Ramirez, Mark Nguyen had Dinh change the signatory of the letter to "Sergio Ramirez" and scanned Ramirez's signature onto the letter.¹ Mark Nguyen then coordinated getting the voter list, the letter, and envelope to Mailing Pros.

¹ Right before the letter was sent to the mailing house, another campaign volunteer told Mark Nguyen that Ramirez's signature was too "feminine." Mark Nguyen then wrote a "new" signature for Ramirez, and that signature was scanned onto the letter.

9. On October 9, Mark Nguyen advised Tan Nguyen that the mailing house was taking longer than desired. It appears that the Committee wanted the letters to be delivered before the date for absentee voters to cast ballots. Tan Nguyen called the mailing house and urged it to expedite the mailing for his friend Mark Nguyen. Tan Nguyen did not tell the mailing house that Mark Nguyen worked on his campaign or that the letters were from his Committee. On October 12, after almost all the letters had been mailed, Mark Nguyen went to Mailing Pros and paid \$4,304.57 for the mailing with his credit card. Mark Nguyen was not reimbursed for the mailing expense.

V. Respondent Mark Nguyen knowingly and willfully violated 2 U.S.C. § 441a(a)(1) by making an excessive in-kind contribution in the form of a coordinated communication.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of six thousand dollars (\$6,000), pursuant to 2 U.S.C. § 437g(a)(5)(B).

VII. Respondent will cease and desist from violating 2 U.S.C. § 441a(a)(1).

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


X. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

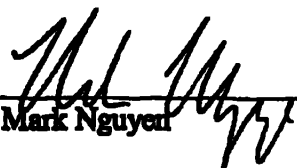
Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

5/28/09
Date

FOR THE RESPONDENT:


Mark Nguyen

4-7-09
Date